

SECOND REGULAR SESSION

HOUSE BILL NO. 1718

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES BARRY, HOLT, HILGEMANN, FRASER, HARLAN,
WHORTON, BRAY, KELLY (27) (Co-sponsors), LOWE, COPENHAVER, HAYWOOD, HENDRICKSON,
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TED WEDEL, Chief Clerk

4219L.01I

AN ACT

To repeal section 198.022, 198.082, 198.525 and 198.526, RSMo, and to enact in lieu thereof eleven new sections relating to staffing, career ladder, and quality of care provisions for long-term care facilities, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 198.022, 198.082, 198.525 and 198.526, RSMo, are repealed and eleven new sections enacted in lieu thereof, to be known as sections 198.022, 198.082, 198.525, 198.526, 198.650, 198.653, 198.656, 198.659, 198.662, 198.665 and 198.668, to read as follows:

198.022. 1. Upon receipt of an application for a license to operate a facility, the department shall review the application, investigate the applicant and the statements sworn to in the application for license and conduct any necessary inspections. A license shall be issued if the following requirements are met:

(1) The statements in the application are true and correct;

(2) The facility and the operator are in substantial compliance with the provisions of sections 198.003 to 198.096 and the standards established thereunder;

(3) The applicant has the financial capacity to operate the facility;

(4) The administrator of a residential care facility II, a skilled nursing facility, or an intermediate care facility is currently licensed under the provisions of chapter 344, RSMo;

(5) Neither the operator nor any principals in the operation of the facility have ever been convicted of a felony offense concerning the operation of a long-term health care facility or other health care facility or ever knowingly acted or knowingly failed to perform any duty which

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

14 materially and adversely affected the health, safety, welfare or property of a resident, while acting
15 in a management capacity. The operator of the facility or any principal in the operation of the
16 facility shall not be under exclusion from participation in the title XVIII (Medicare) or title XIX
17 (Medicaid) program of any state or territory;

18 (6) Neither the operator nor any principals involved in the operation of the facility have
19 ever been convicted of a felony in any state or federal court arising out of conduct involving
20 either management of a long-term care facility or the provision or receipt of health care;

21 (7) All fees due to the state have been paid.

22 2. Upon denial of any application for a license, the department shall so notify the
23 applicant in writing, setting forth therein the reasons and grounds for denial.

24 3. The department may inspect any facility and any records and may make copies of
25 records, at the facility, at the department's own expense, required to be maintained by sections
26 198.003 to 198.096 or by the rules and regulations promulgated thereunder at any time if a
27 license has been issued to or an application for a license has been filed by the operator of such
28 facility. **Except as otherwise provided for in section 198.525**, the department shall make at
29 least two inspections per year, at least one of which shall be unannounced to the operator. The
30 department may make such other inspections, announced or unannounced, as it deems necessary
31 to carry out the provisions of sections 198.003 to 198.136.

32 4. Whenever the department has reasonable grounds to believe that a facility required
33 to be licensed under sections 198.003 to 198.096 is operating without a license, and the
34 department is not permitted access to inspect the facility, or when a licensed operator refuses to
35 permit access to the department to inspect the facility, the department shall apply to the circuit
36 court of the county in which the premises is located for an order authorizing entry for such
37 inspection, and the court shall issue the order if it finds reasonable grounds for inspection or if
38 it finds that a licensed operator has refused to permit the department access to inspect the facility.

198.082. 1. Each nursing assistant hired to work in a skilled nursing or intermediate care
2 facility after January 1, 1980, shall have successfully completed a nursing assistant training
3 program approved by the department or shall enroll in and begin the first available approved
4 training program which is scheduled to commence within ninety days of the date of the nursing
5 assistant's employment. Training programs shall be offered at a location most reasonably
6 accessible to the enrollees in each class. The program may be established by the skilled nursing
7 or intermediate care facility, by a professional organization, or by the department, and training
8 shall be given by the personnel of the facility, by a professional organization, by the department,
9 by any junior college or by the vocational education department of any high school.

10 2. As used in this section the term "nursing assistant" means an employee, including a
11 nurse's aide or an orderly, who is assigned by a skilled nursing or intermediate care facility to

12 provide or assist in the provision of direct resident health care services under the supervision of
13 a nurse licensed under the nursing practice law, chapter 335, RSMo. This section shall not apply
14 to any person otherwise licensed to perform health care services under the laws of this state. It
15 shall not apply to volunteers or to members of religious or fraternal orders which operate and
16 administer the facility, if such volunteers or members work without compensation.

17 3. The training program after January 1, 1989, shall consist of at least the following:

18 (1) A training program consisting of at least seventy-five classroom hours of training on
19 basic nursing skills, clinical practice, resident safety and rights, the social and psychological
20 problems of residents, and the methods of handling and caring for mentally confused residents
21 such as those with Alzheimer's disease and related disorders, and one hundred hours supervised
22 and on-the-job training. The one hundred hours may consist of normal employment as nurse
23 assistants under the supervision of a licensed nurse; and

24 (2) Continuing in-service training to assure continuing competency in existing and new
25 nursing skills. All nursing assistants trained prior to January 1, 1989, shall attend, by August 31,
26 1989, an entire special retraining program established by rule or regulation of the department
27 which shall contain information on methods of handling mentally confused residents and which
28 may be offered on premises by the employing facility.

29 4. Nursing assistants who have not successfully completed the nursing assistant training
30 program prior to employment may begin duties as a nursing assistant only after completing an
31 initial twelve hours of basic orientation approved by the department and may provide direct
32 resident care only if under the general supervision of a licensed nurse prior to completion of the
33 seventy-five classroom hours of the training program.

34 **5. Any skilled nursing or intermediate care facility that has a class I violation may**
35 **continue to its nursing assistant training program if such facility submits a proposed plan**
36 **for the department to provide technical assistance to such facility.**

198.525. 1. **Except as otherwise provided for in subsection 2 of this section**, in order
2 to comply with sections 198.012 and 198.022, the department of health and senior services shall
3 inspect residential care facilities II, intermediate care facilities and skilled nursing facilities
4 attached to acute care hospitals at least twice a year.

5 **2. For any residential care facility II, intermediate care facility, or skilled nursing**
6 **facility with no class I violations in the immediately preceding twenty-four month period,**
7 **the department shall inspect such facility once a year.**

198.526. 1. **Except as otherwise provided for in section 198.525**, the [division of
2 aging] **department of health and senior services** shall inspect all facilities licensed by the
3 [division] **department** at least twice each year. Such inspections shall be conducted:

4 (1) Without the prior notification of the facility; and

5 (2) At times of the day, on dates and at intervals which do not permit facilities to
6 anticipate such inspections.

7 2. The division shall annually reevaluate the inspection process to ensure the
8 requirements of subsection 1 of this section are met.

198.650. As used in sections 198.650 to 198.662, the following terms mean:

2 (1) "Direct caregiver", a certified nurse assistants (CNA), a licensed practical nurse
3 (LPN), and a registered nurse (RN);

4 (2) "Facility", the same as such term is defined in section 198.006;

5 (3) "Licensed personnel", registered nurses and licensed practical nurses.

**198.653. 1. The department of health and senior services shall not issue or renew
2 a license for a facility unless such facility employs nursing personnel sufficient in number
3 and skill to provide continuous twenty-four hour a day nursing care and services necessary
4 to meet the needs of each resident in the facility.**

5 **2. Facilities shall maintain:**

6 (1) A full-time registered nurse director of nursing;

7 (2) A registered nurse supervisor on duty twenty-four hours a day, seven days a
8 week; and

9 (3) For facilities with one hundred beds or more:

10 (a) A full-time registered nurse assistant director of nursing; and

11 (b) A full-time director of in-service education.

12 **3. Facilities shall maintain a licensed personnel-to-residents ratio of no less than:**

13 (1) One to fifteen for morning shifts;

14 (2) One to twenty for afternoon shifts; and

15 (3) One to thirty for night shifts.

16 **4. Facilities shall maintain a direct caregivers-to-residents ratio of no less than:**

17 (1) One to five for morning shifts;

18 (2) One to ten for afternoon shifts; and

19 (3) One to fifteen for night shifts.

20 **5. Any employee of the facility designated as a member of the nursing staff shall not
21 provide services such as food preparation, housekeeping, laundry, or maintenance. A
22 person employed to provide services such as food preparation, housekeeping, laundry, or
23 maintenance shall not provide nursing care to residents and shall not be counted for
24 purposes of determining compliance with the staffing ratios established in subsection 4 of
25 this section.**

26 **6. The staffing ratios in subsections 2, 3, and 4 of this section are minimum
27 standards only. Facilities shall employ additional staff as necessary to ensure quality**

28 resident care.

29 7. A facility may opt out of the staffing ratios set forth in subsections 2, 3, and 4 of
30 this section and in lieu thereof provide minimum staffing requirements on a basis of hours
31 per resident day (HPRD), as defined by the Centers for Medicare and Medicaid Services.
32 The facility shall submit a plan to the department of health and senior services for prior
33 approval based on the following criteria:

34 (1) To provide optimal care in delivering services, a minimum of three and one-half
35 hours per resident day shall be provided to residents of the facility;

36 (2) Of such three and one-half hours per resident day, no less than two hours per
37 resident day shall be provided for with direct care from certified nurse assistants; and

38 (3) In determining the remaining one and one-half hours per resident day, the
39 department of health and senior services shall work with the facility in determining the
40 standard of care using the minimum data set (MDS) currently collected by the department.

 198.656. 1. Beginning in 2003 and every five years thereafter, a committee shall be
2 appointed by the general assembly to conduct a study to assess whether the staffing ratios
3 and standards outlined in section 198.653 are sufficient to meet the needs of residents of
4 facilities. The committee shall be composed of sixteen members, with eight members
5 appointed by the speaker of the house of representatives and eight members appointed by
6 the president pro tem of the senate. Members of the committee shall include
7 representatives for consumers and consumer advocacy groups, long-term care workers and
8 their representatives, and long-term care providers. Members shall serve two-year terms.

9 2. The committee shall contract with experts in the field of nurse staffing research
10 and long-term care to recommend a methodology for determining appropriate levels of
11 staffing based on acuity.

12 3. Facilities shall adjust staffing ratios based on the methodology determined in
13 subsection 2 of this section to meet the needs of residents with higher acuity levels or
14 residents requiring rehabilitation.

 198.659. 1. Facilities shall post in a conspicuous location in each wing or floor of
2 the facility:

3 (1) The current number of licensed and unlicensed staff directly responsible for
4 resident care in the facility;

5 (2) The current licensed personnel-to-residents and direct caregivers-to-residents
6 ratios for the facility.

7

8 The department of health and senior services shall develop and provide a uniform form for
9 the posting required by this section for all facilities.

10 **2. Facilities shall post in a conspicuous location accessible to all residents, residents'**
11 **families, caregivers, and consumers:**

12 **(1) The average daily staffing ratios for the most recently concluded cost reporting**
13 **period; and**

14 **(2) A posting provided by the department of health and senior services which**
15 **describes the minimum staffing standards and ratios required pursuant to sections 198.653**
16 **and 198.656.**

198.662. 1. The department of health and senior services shall impose an
2 **administrative penalty upon any facility that fails to meet the staffing requirements set**
3 **forth in sections 198.653 and 198.656. Each day a facility fails to meet such staffing**
4 **requirements shall constitute a separate offense.**

5 **2. The following penalties shall be imposed:**

6 **(1) Three thousand fifty dollars to ten thousand dollars for each day of deficiencies**
7 **in staffing that constitute immediate jeopardy to resident health and safety, and for second**
8 **and subsequent violations; and**

9 **(2) Fifty dollars to three thousand dollars for each day of all other violations.**

10 **3. In addition to the penalties set forth in subsections 1 and 2 of this section, in any**
11 **action brought by or on behalf of a resident of the facility for intentional or negligent**
12 **infliction of harm or lack of adequate care, the resident's heir and assigns must establish**
13 **that a failure to meet the staffing requirements in sections 198.653 and 198.656 was a**
14 **contributory cause of any injury sustained by the resident.**

15 **4. The department of health and senior services shall impose an administrative**
16 **penalty of one thousand dollars a day for each day for which a facility fails to meet the**
17 **posting requirements set forth in section 198.659.**

198.665. 1. As used in this section, the following terms mean:

2 **(1) "Direct caregiver", a certified nurse assistant (CNA);**

3 **(2) "Facility", the same meaning as defined in section 198.006;**

4 **(3) "MCLI", Missouri career ladder initiative.**

5 **2. On or before July 1, 2003, the department of health and senior services shall,**
6 **subject to appropriations, establish a program to be known as the "Missouri Career**
7 **Ladder Initiative". Such program shall provide education, training, and mentoring**
8 **opportunities for direct caregivers. The program shall consist of the following:**

9 **(1) The program shall be available to fifty facilities based upon competitive grants**
10 **provided by the state;**

11 **(2) Facilities may submit an application to participate in the program and**
12 **applicants will be selected based upon interest of caregivers within a facility and any other**

13 criteria established by the department;

14 (3) The program shall consist of the following three levels of participation, with
15 each level consisting of eight weeks of training with a minimum of four hours of training
16 per week:

17 (a) Level 1: individualized care;

18 (b) Level 2: pioneering approaches to quality of life; and

19 (c) Level 3: leadership and team building approaches;

20 (4) After each successful completion of a level by a caregiver, the facility shall
21 provide documentation to the department that such caregiver has successfully completed
22 a level of the program. Subject to appropriations, the department shall, on a quarterly
23 basis, provide the following amounts to facilities to give to caregivers who complete each
24 level of the program:

25 (a) Level 1: seventy-five dollars per quarter;

26 (b) Level 2: one hundred fifty dollars per quarter; and

27 (c) Level 3: two hundred fifty dollars per quarter.

28 3. The department shall provide facilities with the materials and technical
29 assistance needed to provide the education, training, and mentoring for the program. In
30 addition, each facility participating in the program shall, subject to appropriations, receive
31 ten thousand dollars to administer the program in accordance with the guidelines
32 established by the department.

33 4. Subject to appropriations, a caregiver that completes the program may continue
34 to earn up to an additional one thousand dollars a year if such caregiver participates in a
35 continuing education program developed and approved by the department. In developing
36 such continuing education program, the department shall establish a mentoring program
37 for caregivers who provide leadership, education, and training to newly hired caregivers
38 within the facility.

39 5. The department may promulgate rules to implement the provisions of this
40 section. No rule or portion of a rule promulgated under the authority of this section shall
41 become effective unless it has been promulgated pursuant to chapter 536, RSMo.

198.668. 1. Subject to appropriations, the department of health and senior services
2 shall develop a plan to promote the nursing profession for long-term care facilities. Such
3 plan shall implement the following:

4 (1) Promote the nursing profession through grants and low-interest loans to schools
5 of nursing;

6 (2) Establish a scholarship and loan repayment program for persons interested in
7 becoming a caregiver in a long-term care facility. Such program should also assist certified

8 nursing assistants to further their education in the long-term care field; and
9 (3) Establish an internship program for training in long-term specialty care areas.
10 2. The department may promulgate rules to implement the provisions of this
11 section. No rule or portion of a rule promulgated under the authority of this section shall
12 become effective unless it has been promulgated pursuant to chapter 536, RSMo.